

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS**

IN RE:) Chapter 11
)
) Case No. 09-41945
ROMEO IUSCO and MONICA IUSCO)
) Hon. Judge Jacqueline P. Cox
Debtors.)
)

NOTICE OF MOTION

To: PLEASE SEE ATTACHED SERVICE LIST.

PLEASE TAKE NOTICE that on Wednesday, March 31, 2010, at 9:30 a.m., or as soon thereafter as counsel may be heard, I shall appear before the Honorable Jacqueline P. Cox, Bankruptcy Judge, or any judge sitting in her stead, courtroom 619 at 219 South Dearborn, Chicago, Illinois, and shall then and there present the attached **Motion for Relief from Automatic Stay**, a true and correct copy of which is hereby served upon you.

DEVON BANK

/s/ Ernest D. Simon
Ernest D. Simon, One of its Attorneys

CERTIFICATE OF SERVICE

I, Ernest D. Simon, an attorney, certify that I served the foregoing by mailing a copy of it to those persons identified in the attached Service List by depositing the same in the United States mail at 105 W. Adams, Chicago, Illinois on March 16, 2010 with proper postage prepaid and by electronic filing, to the persons identified in the attached service list electronically using the CM/ECF system.

/s/ Ernest D. Simon
Ernest D. Simon

Ernest D. Simon (esimon@erniesimon.com)
Attorneys for Creditor
105 W. Adams, Suite 1400
Chicago, Illinois 60603
Telephone: (312) 205-1010

/s/ Ernest D. Simon
Ernest D. Simon

SERVICE LIST

VIA U.S. MAIL

Romeo Iusco and Monica Iusco
8651 Harms Road
Skokie, IL 60077

Mr. Edward Burke
CHUHAK & TECSON, P.C.
30 South Wacker Drive, 26th floor
Chicago, Illinois 60606-7413

Michael V. Ohlman
Forrest L. Ingram, P.C.
79 W. Monroe Street
Suite 900
Chicago, IL 60603

VIA CM/ECF

Edmond M. Burke
Francisco E. Connell
CHUHAK & TECSON, P.C.
30 South Wacker Drive, 26th Floor
Chicago, Illinois 60606-7413
312.444.9300

Forrest L. Ingram
Forrest L. Ingram, P.C.
79 W. Monroe Street
Suite 900
Chicago, IL 60603
312 759-2838
Fax: 312 759-0298
Email: fingram@fingramlaw.com

Peter L. Berk
Law Office of Peter L. Berk
79 W. Monroe
Suite 900
Chicago, IL 60603
312 759-2838
Fax: 312 759-0298
Email: plberk@berklegal.com

William T. Neary, U.S. Trustee
Office of the U.S. Trustee, Region 11
219 S. Dearborn St., Room 873
Chicago, IL 60604

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS**

IN RE:)	Chapter 11
)	
)	Case No. 09-41945
ROMEO IUSCO and MONICA IUSCO)	
)	Hon. Judge Jacqueline P. Cox
Debtors.)	
)	

DEVON BANK MOTION FOR RELIEF FROM THE AUTOMATIC STAY

Devon Bank, an Illinois banking association, (“Devon”), a secured creditor in the captioned Chapter 11 case, by its attorney Ernest D. Simon, and pursuant to Section 362(d) of the United States Bankruptcy Code (11 U.S.C. §101 *et seq.*) (the “Bankruptcy Code”) and Federal Rule of Bankruptcy Procedure 4001(a)(1), moves this Court for the entry of an order granting it Relief from the Automatic Stay in order to pursue foreclosure of its lien on certain real owned by the Debtors, states as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. §§ 157(b)(2)(A), (G) and (O). Venue is proper in this Court pursuant to 28 U.S.C. § 1409.

PARTIES AND BACKGROUND

2. On November 5, 2009, Romeo and Monica Iusco (the “Debtors”) filed for relief under Chapter 11 of the United States Bankruptcy Code.

3. Devon is a secured creditor of the Debtors by virtue of a residential mortgage loan (the “Loan”) by and between Devon and the Debtors.

4. On September 21, 2007 Devon made a Loan in the principal amount of \$477,000.00 to the Debtors evidenced by a corresponding Credit Agreement and Disclosure ("Agreement") executed in favor of Devon Bank by Debtors and secured by a residential second mortgage ("Mortgage") from Debtors recorded against real property commonly known as 8651 Harms Road., Skokie, IL 60077 ("Harms Rd. Property"). The Mortgage was recorded with the Cook County Recorder of Deeds on October 1, 2007 as Document No. 0727402185. Copies of the Mortgage and the Agreement are attached hereto as Exhibits 1 and 2.

5. On or about September 1, 2009, the Agreement and Mortgage went into default as a result of non-payment.

6. U.S. Bank holder of the first Mortgage on the Harms Road Property commenced a foreclosure of its Mortgage on February 16, 2010 and Devon needs to file a counterclaim in that case to protect the lien of its second Mortgage and against being foreclosed.

ARGUMENT

7. Pursuant to § 362(d) a party in interest may receive Relief from the Automatic Stay:

- (1) for cause, including the lack of adequate protection of an interest in property of such party in interest; or
- (2) with respect to a stay of an act against property under subsection (a) of this section, if (A) the Debtor does not have an equity in such property; and (B) such property is not necessary to an effective reorganization.

8. Cause. Debtors' have failed to make payments on the aforesaid Loan as required under the terms of the corresponding loan documents referenced above and continues to be in default since the dates referenced above through the present. Further Debtors' have

failed to pay the real estate taxes due on the Harms Rd. Property. Debtors' failure and inability to perform their obligations under the Loan have left Devon's secured interest inadequately protected.

9. No Equity in the Harms Road Property. Attached as Exhibit 3 is Debtors' Schedule A filed in this matter and as Exhibit 4 an appraisal which was attached to US Bank's (previously granted) Motion for Relief from the Automatic Stay which shows a value of \$785,000.00. The amount due to US Bank pursuant to its Complaint to Foreclose is \$304,700.00 and the balance due to Devon is in excess of \$480,000.00. The Debtors have listed on Exhibit 3 that there are Secured Claims of \$1,180,959.78 against the Harms Road Property.

10. Given the continued depressed real estate market, it is likely that the Harms Road Property's value is even less than the appraised amount. Moreover interest has continued to accrue on Devon's Loan.

11. The Harms Road Property is Not Necessary for an Effective Reorganization. To the extent that there is no equity in the Harms Road Property and it does not generate any income it is not necessary for an effective reorganization.

12. By reason of the premises and pursuant to § 362(d) of the Bankruptcy Code, Devon is entitled to relief from the automatic stay to foreclose or otherwise take possession of the Harms Road Property as described and identified herein.

WHEREFORE, Devon Bank, an Illinois banking association, prays for the following relief: (i) an order granting this motion; (ii) an order modifying the automatic stay to allow foreclosure on the Harms Road Property; (iii) an order waiving the requirements of Fed. R. Bankr. P. 4001(a)(3) and holding such order effective

immediately upon its entry; and (iv) for such other and further relief as this honorable Court deems just and appropriate.

DEVON BANK

/s/ Ernest D. Simon
Ernest D. Simon, One of its Attorneys

Ernest D. Simon (esimon@erniesimon.com)
Attorneys for Creditor
105 W. Adams, Suite 1400
Chicago, Illinois 60603
Telephone: (312) 205-1010